

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate)	RM-8117, RM-8030
Future Development of SMR Systems)	RM-8029
in the 800 MHz Frequency Band)	
)	
Implementation of Sections 3(n))	GN Docket No. 93-252
and 332 of the Communications Act)	
Regulatory Treatment of Mobile)	
Services)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding)	

To: The Commission

OPPOSITION
OF THE

INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.
AND THE COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

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The Industrial Telecommunications Association, Inc. and the Council of Independent Communication Suppliers (collectively, the "Joint Commenters"), pursuant to Section 1.429(f) of the Federal Communications Commission's rules and regulations, hereby submit this Opposition to various points raised in two petitions for reconsideration filed in the above-referenced proceeding.

By the way of a preface to this Opposition, the Joint Commenters note that, in its Petition for Reconsideration, the Industrial Telecommunications Association strongly objected to the reallocation of the General Category channels exclusively for SMR use. Many of the petitions for reconsideration filed in this

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proceeding expressed similar concern. J.A. Placek Construction Co., for example, stated that the reallocation of the General Category channels will cause "irreparable damage" to the internal communications systems of the nation's critical industries.¹

UTC observes that the utility industry alone holds licenses for more than 7,000 frequency assignments nationwide in the General Category. "It is particularly inequitable," UTC states, "to now arbitrarily designate the General Category channels as exclusively 'commercial' channels as this will deprive non-commercial licensees of an important resource in developing and maintaining their critical communications networks."² Other petitioners raise similar arguments.

**Petition for Reconsideration/Comments Filed by
the Association of Public-Safety Communications
Officials-International, Inc.**

In its Petition for Reconsideration and Comments, the Association of Public-Safety Communications Officials-International, Inc. (APCO) asks the Commission to make several changes that would be favorable to public safety licensees.

APCO requests that the Commission: (1) maintain the freeze on inter-category sharing in the 800 MHz band; (2) protect public

¹ J.A. Placek petition for reconsideration, page 1.

² UTC petition for reconsideration, page 7.

safety licensees currently operating on the General Category channels from any requirement to relocate their systems to other channels; (3) preserve reasonable "slow-growth" or extended implementation rules for public safety systems in the General Category; and (4) preserve access to the General Category channels by public safety entities.

The Joint Commenters disagree strongly with APCO's stance on the preservation of the existing freeze on inter-category sharing in the 800 MHz band. The Joint Commenters believe that application freezes, in general, are ill-advised and injurious to the promotion of commerce within the United States. The freeze on applications for inter-category sharing in the 800 MHz band is of particular concern to ITA members. This freeze has deprived applicants of an essential alternative for establishing or expanding 800 MHz systems.

Moreover, the adverse economic impact on the wireless industry is considerable, because licensees have, literally, been foreclosed from proceeding with plans to establish or expand their telecommunications systems in areas of the country where there are no available Industrial/Land Transportation or Business pool channels. The freeze has prevented entities in critical industrial, business and land transportation activities from using public safety channels — as a last resort — to satisfy vital internal communications requirements.

The Joint Commenters do not disagree with other points raised by APCO. It is the belief of the Joint Commenters that all licensees currently operating on the General Category channels, public safety as well as industrial, land transportation and business, should be shielded from any requirement to relocate their systems to other channels.

The Joint Commenters also agree that reasonable extended implementation rules should be preserved for all private radio licensees in the General Category, including public safety as well as industrial, land transportation and business. Finally, the Joint Commenters agree that all private radio eligibles, including public safety entities, should continue to have access to the General Category channels.

The Joint Commenters are concerned, however, that APCO's filing, to the extent that it focuses solely on the needs and requirements of public safety entities, may be misleading. APCO's arguments leave the impression that public safety users stand alone in their need for slow-growth systems and for continued access to the General Category channels. In fact, the needs facing other industrial, land transportation and business users are just as pressing, and the budgetary constraints just as compelling, as for public safety licensees. Accordingly, the Joint Commenters urge the Commission to recognize that the interests and requirements of public safety, industrial, land

transportation and business licensees are similar and integrally related.

If there is any question on these points, the Commission need only review the petitions for reconsideration filed by such entities as Federal Express Corporation, UTC, J.A. Placek Construction Co., Consumers Power Company, and Warner Communications Co., Inc., among others. The petitions filed by all of these entities attest to the critical need of industrial and business entities for land mobile spectrum and the invaluable role that 800 MHz channels serve in satisfying the day-to-day communications requirements of these entities.

Nextel Communications, Inc.

In its Petition for Partial Reconsideration and Clarification, Nextel Communications, Inc. urged the Commission to reduce the mandatory negotiation period from two years to one year. Nextel argued that a two-year window for mandatory relocation negotiations provides opportunities to delay the introduction of new services. ITA recognizes that Nextel's interests would clearly be served by expediting the negotiation process. However, the Commission must also consider the interests of those licensees who will be displaced from the upper block channels.

Licensees displaced from the upper block channels will

experience significant disruption to their systems, with a resulting adverse impact on the quality of service during the transition period. ITA believes the Commission erred in its December 15, 1995 First Report and Order in this proceeding decision when it limited the voluntary negotiation period to one year. ITA does not object to limiting the mandatory period to one year, provided that the Commission extends the voluntary period to two years.

As the Personal Communications Industry noted in its Petition for Reconsideration, the rules proposed in this proceeding will have the effect of limiting participants in the auction to Nextel and its affiliates. PCIA characterizes the auctioning of the upper block channels as essentially a "private auction" for Nextel and its affiliates.³

Regardless of whether PCIA's view is correct, it is clear that Nextel and its affiliates will be, by far, the dominant bidder in the auctions. This being the case, Nextel will be able to exert considerable control over the pace of negotiations. Nextel already possesses the market power and business clout to push the negotiations process along quickly if it chooses to do so. It seems unnecessary to further enhance the natural advantage that Nextel will enjoy by narrowing the time frame for negotiations.

³ PCIA petition for reconsideration, page 14.

The Commission already has a well-established and carefully developed structure for negotiations involving PCS licensees and the licensees of incumbent point-to-point microwave systems. This structure entails a two-year voluntary negotiation period, followed by a one-year mandatory period. The Commission recently reiterated the public interest benefits of this two-stage process in a Report and Order and Further Notice of Proposed Rule Making adopted April 25, 1996.⁴

The Joint Commenters believe that the same two-year voluntary and one-year mandatory negotiation process adopted in the PCS proceeding will serve the land mobile industry well in the development of 800 MHz wide area systems. The Joint Commenters see no compelling reason for deviating from the PCS precedent with respect to the negotiation program applicable to the upper block of 200 SMR channels. Accordingly, the Joint Commenters strongly urge the Commission to adopt, on reconsideration in this proceeding, a two-year voluntary negotiation period, followed by a one-year mandatory period.

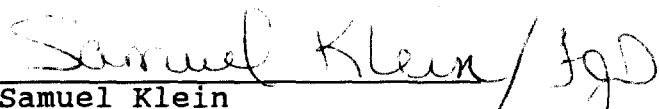
⁴ News Release, issued April 25, 1996, reporting action in WT Docket No. 95-157.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. and the Council of Independent Communication Suppliers respectfully submit this Opposition and urge the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.**

By: 
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Date: April 29, 1996

CERTIFICATE OF SERVICE

I, Barbara J. Levermann, do hereby certify that on the 29th day of April 1996, I forwarded to the parties listed below a copy of the foregoing Opposition to Petitions for Reconsideration of the Industrial Telecommunications Association, Inc. and the Council of Independent Communication Suppliers, by first-class mail, postage pre-paid:

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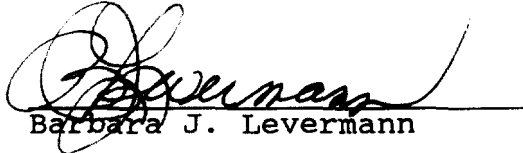
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